

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION**

SNYDERS HEART VALVE LLC,

Plaintiff,

v.

UNITED STATES PATENT AND
TRADEMARK OFFICE,

Defendant.

CIVIL ACTION NO. 4:18-cv-581

JURY TRIAL DEMANDED

**COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF FOR VIOLATION
OF THE FREEDOM OF INFORMATION ACT, 5 U.S.C. § 552 et seq.**

Plaintiff Snyders Heart Valve LLC (“Snyders”) files this complaint against the United States Patent and Trademark Office (“Defendant” or “USPTO”), alleging, based on its own knowledge as to itself and its own actions and based on information and belief as to all other matters, as follows:

PARTIES

1. Snyders is a limited liability company formed under the laws of the State of Texas, with a principal place of business in Tyler, Texas.
2. Defendant USPTO, located at 600 Dulany Street, Alexandria, VA 22314, is a federal agency within the meaning of 5 U.S.C. § 552.

JURISDICTION AND VENUE

3. This is an action under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, to order the production of agency records requested on behalf of plaintiff, concerning

certain pending inter partes review proceedings, which defendant has improperly withheld from plaintiff.

4. Venue is proper in this district pursuant to 5 U.S.C. § 552(a)(4)(B). Plaintiff resides in this judicial district at 2325 Oak Alley, Tyler, Texas 75703.

FACTS

5. Plaintiff, Snyders Heart Valve LLC, is the requester of the records which defendant is now withholding.

6. Defendant United States Patent and Trademark Office is an agency of the United States and has possession of the documents that plaintiff seeks.

7. By letter dated May 4, 2018, plaintiff requested access to documents related to four pending inter partes review petitions/proceedings captioned St. Jude Medical, LLC v. Snyders Heart Valve LLC, IPR2018-00105, IPR2018-00106, IPR2018-00107, and IPR2018-00109 (particularly, documents related to institution decisions in those proceedings and the recusal/involvement/replacement of Director Andrei Iancu in those proceedings). A copy of this letter is attached as Exhibit 1.

8. On May 7, 2018, plaintiff's FOIA Request was perfected.

9. By letter dated May 17, 2018, counsel for plaintiff received a fee estimate of \$540.64 from Charletta Blackshear, USPTO FOIA Specialist. A copy of this letter is attached as Exhibit 2.

10. The twenty-day statutory response period for the Agency's initial determination was June 5, 2018. The Request was placed on hold by defendant pending receipt of fee payment. Upon defendant's receipt of payment, the twenty-day response date was adjusted to June 14, 2018.

11. By letter dated June 14, 2018, counsel for plaintiff received notice of an additional extension of the response time by ten working days to June 28, 2018. A copy of this letter is attached as Exhibit 3.

12. By letter dated July 12, 2018, counsel for plaintiff filed an administrative appeal demanding compliance with the Request. A copy of this letter is attached as Exhibit 4.

13. As of the date of this filing, counsel for plaintiff has not received an initial determination, a determination on appeal, or the production of any documents from the Patent and Trademark Office.

14. Counsel for plaintiff did receive a phone call from Lewis Boston, a PTO FOIA officer, who indicated that the agency had located around 3,000 pages in responsive documents and that production would likely occur “next month” but not before the twenty day deadline for a determination on appeal had passed.

15. Plaintiff has a right of access to the requested information under 5 U.S.C. § 552(a)(3), and there is no legal basis for defendant’s denial of such access.

VIOLATION OF FOIA FOR FAILURE TO PROVIDE A DETERMINATION WITHIN THIRTY BUSINESS DAYS

16. Defendant has a legal duty under FOIA to determine whether to comply with a request within thirty days (excepting Saturdays, Sundays, and legal public holidays) after receiving the request, receiving the estimated fee, and invoking the statutory ten-day extension, and also has a legal duty to notify the requester immediately of the agency’s determination and the reasons therefor.

17. Defendant’s failure to determine whether to comply with the Request within thirty business days after receiving it violates FOIA, 5 U.S.C. § 552(a)(6)(A)(i) & (a)(6)(B), and applicable regulations promulgated thereunder.

VIOLATION OF FOIA FOR FAILURE TO MAKE RECORDS AVAILABLE

18. Plaintiff has a legal right under FOIA to obtain the specific agency records requested on May 4, 2018, and there exists no legal basis for Defendant's failure to promptly make the requested records available to Plaintiff.

19. Defendant's failure to promptly make available the records sought by the Request violates FOIA, 5 U.S.C. § 552(a)(3)(A), and applicable regulations promulgated thereunder.

20. Defendant currently has possession, custody, or control of the requested records.

JURY DEMAND

Plaintiff hereby requests a trial by jury on all issues so triable by right.

PRAYER FOR RELIEF

Plaintiff requests that the Court award it the following relief:

- a. Declare that Defendant violated FOIA by failing to determine whether to comply with the Request within thirty business days and by failing immediately thereafter to notify Plaintiff of such determination and the reasons therefor;
- b. Declare that Defendant violated FOIA by unlawfully withholding the requested records;
- c. Order Defendants to immediately disclose the requested records to Plaintiff without charge for any search or duplication fees;
- d. Award Plaintiff its reasonable costs and attorneys' fees; and
- e. Grant such other relief as the Court may deem just and proper.

Dated: August 15, 2018

Respectfully submitted,

/s/ Christopher Ryan Pinckney
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